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| Notice of Allowability | Application No. | Applicant(s) |
|------------------------|-----------------|--------------|
| | 09/621,516 | POLI ET AL. |
| | Examiner | Art Unit |
| | Scott Beliveau | 2614 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to 17 November 2004.
2. The allowed claim(s) is/are 42 and 43 (renumbered as 1 and 2).
3. The drawings filed on 21 July 2000 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 1) hereto or 2) to Paper No./Mail Date _____.
(b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date _____.
7. IDENTIFYING INDICIA such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
 Paper No./Mail Date _____
4. Examiner's Comment Regarding Requirement for Deposit
 of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
 Paper No./Mail Date _____.
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____.

DETAILED ACTION

Allowable Subject Matter

The following is an examiner's statement of reasons for allowance:

The art of record either alone or in combination fails to particular disclose or suggest the claimed system and method taken as a whole for the downloading of code and data objects for the upgrading of the software of firmware of set-top boxes using download control message which specifies the operating environment as determined based upon "whether the set-top terminal is executing and controlled by a platform object or a system object".

As to the closest art of record, the Kauffman et al. reference discloses a method for "controlling the downloading of code and data objects by a set-top terminal" [40]. The method comprises "transmitting a download control message to said set-top terminal" or instructions which "specify an object to be downloaded" or firmware package, a "ROMable size of said object" associated with the number of fixed length segments, and a "location of said object" (i.e., on the primary or a specified secondary channel) "such that said set-top terminal is enabled to commence downloading said object upon receipt of said download control message" (Col 3, Line 39 – Col 4, Line 2; Col 7, Lines 29-38).

The "download control message" in conjunction with specifying the particular size of the firmware further "specifies . . . an operating environment of said set-top terminal in which said terminal is to respond to said download message" wherein the aforementioned object is "downloaded . . . only if said set-top terminal is in said operating environment specified by said download control message". For example, the embodiment is operable to address firmware to particular terminals which are inherently associated with an "operating

environment" (ex. geographic region). Alternatively, the limitation may be met wherein the "operating environment" may be associated with the particular model of receiver such that a firmware package that is too large for a particular model of receiver will be rejected (Col 9, Lines 31-42). However, in taking the broad position that the "operating environment" is associated with either the geographic region of the set-top terminal or physical manifestation of the receiver, there is no basis in the art of record by which to transition to the operating environment being determined on the basis of art recognized "platform objects" and "system objects".

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB
January 14, 2005



JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600